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ABSTRACT

This outline of the standards governing civil rights in vocational education programs contains information on the general provisions of civil rights legislation as it applies to education as well as standards pertaining to the establishment of vocational education programs and facilities: recruitment and admission: treatment of students in vocational programs, services, and activities: employment: and age discrimination. The purpose and scope of these standards are covered. Vocational facility site selection, eligibility based on numerical limitations and geographical boundaries, vocational facility renovation and construction, and accessibility for handicapped persons are described. Promotional activities: public notification: admission tests: participation of handicapped students in private vocational programs: exploratory courses: preadmission requirements: differential treatment based on parental, family, or marital status: and pregnancy are discussed. Standards for program requirements: guidance and counseling: special rules protecting handicapped children: least restrictive environments: testing: student organizations, housing, and facilities: cooperative programs: and federal assistance are listed. Among the employment standards examined are those relating to employment tests and inquiries, accomodations for handicapped employees, hiring and firing, salaries, leaves, job classifications, lines of progression and seniority, marital and parental status, pregnancy, and sex. The concept of age discrimination is clarified. A brief list of definitions is appended. (MN)

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THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

STANDARDS GOVERNING CIVIL RIGHTS IN VOCATIONAL EDUCATION PROGRAMS

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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GENERAL PROVISIONS

1.1 What is the purpose of these standards?

a) The purpose of these standards is to set forth the Federal civil rights requirements prohibiting discrimination on the basis of sex, race, color, national origin, handicap, and age in vocational education programs.

b) The Federal civil rights authorities governing vocational education programs are as follows:

1) Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin.

2) Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex.

3) Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap.

4) The Age Discrimination Act of 1975 prohibits discrimination on the basis of age.

5) The U.S. Office of Civil Rights' "Guidelines for Eliminating Discrimination and Denial of Services in Vocational Education on the Basis of Race, Color, National Origin, Sex and Handicap" prohibit unlawful discrimination in vocational education programs.

1.2 What is the scope of these standards?

These standards apply to each recipient of Federal financial assistance offering or administering a program of vocational education or training. (45 CFR 80.13; 45 CFR 86.2(h); 45 CFR 84.3)

1.3 What is prohibited?

No person shall, on the basis of sex, race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to unlawful discrimination under any vocational education program or activity.
(See 1.1(b) above)

1.4 What types of voluntary remedial actions are permitted?

a) A recipient may take voluntary action that might otherwise violate these standards when the action is taken to remedy the effects of conditions that resulted in limited participation in the recipient's program or activity by handicapped persons or by persons of a particular sex, race, color, national origin, or age group.

b) Permissible voluntary actions to remedy the effects of conditions that resulted in limited participation include, but are not limited to:

1) Consideration of sex, race, color, national origin, handicap or age in selecting from among potential students or employees.

2) Accelerated recruitment from institutions and communities containing significant proportions of minorities or other under-represented groups.

3) Offering special summer and tutoring services to assist members of under-represented groups, particularly educationally and economically disadvantaged persons, to meet admissions or selection criteria; and

4) Establishment and pursuit of numerical goals to achieve a balanced student body or a diverse group of employees.

c) Recipients are not permitted to establish a quota by setting aside a fixed number of positions for which persons are chosen solely on the basis of sex, race, national origin, handicap or age.
(45 CFR 80.5; 45 CFR 86.3; 45 CFR 84.6; OCR Affirmative Action Policy Interpretation--45 FR 58509)

1.5 What types of mandatory remedial actions are required?

a) Whenever the Commissioner finds that a recipient has discriminated against persons on the basis of sex, race, color, national origin, handicap, or age, the recipient shall take whatever remedial action, including the submission of a compliance plan, that the Commissioner deems necessary to overcome the effects of the discrimination.

b) Where a recipient is found to have discriminated against persons in violation of these standards and where another recipient contributes to the discrimination or exercises control over the recipient that has discriminated, the Commissioner may require either or both recipients to take remedial action.
(45 CFR 80.5; 45 CFR 86.3; 45 CFR 84.6; OCR Affirmative Action Policy Interpretation--44 FR 58509)

SECTION II

ESTABLISHMENT OF VOCATIONAL EDUCATION PROGRAMS AND FACILITIES

2.1 What is the general rule?

A recipient may not establish or maintain a vocational education program or facility that results in unlawful discrimination against persons on the basis of sex, race, color, national origin, handicap, or age.
(OCR Guidelines, Section IV B, 44 FR 17162)

2.2 What are the specific applications of the general rule?

a) Vocational facility site selection.

1) A recipient may not select or approve of a site for a vocational education facility that excludes, segregates or otherwise discriminates against students on the basis of sex, race, color, national origin, or handicap.

2) A recipient shall locate facilities so that they are readily accessible to minority communities and handicapped persons, and are not identifiable as intended for nonminority or minority students.
(45 CFR 80.3; 45 CFR 84.4; 45 CFR 86.21; OCR Guidelines, Section IV B, 44 FR 17165)

b) Eligibility based on numerical limitations.

A recipient may not adopt or maintain a system of limiting admission to its vocational education program to a fixed number of students from each sending school, program or curriculum area if the system disproportionately excludes or discriminates against students on the basis of race, color, sex, national origin, or handicap.
(OCR Guidelines, Section IV F, 44 FR 17166)

c) Eligibility based on geographic boundaries.

A recipient may not establish, approve of, or maintain geographic or attendance boundaries for a vocational education program which result in discrimination against students on the basis of sex, race, color, national origin, or handicap.
(45 CFR 80.3; 45 CFR 84.4; 45 CFR 86.21; OCR Guidelines, Section IV C, 44 FR 17165)

d) Vocational facility renovation and construction.

A recipient may not renovate or construct a vocational education facility in a manner that results in or perpetuates unlawful discrimination on the basis of sex, race, color, national origin, or handicap. Any planned renovation or construction shall be performed in a

manner designed to eliminate, to the maximum extent feasible, all prior unlawful discrimination. Where renovation or construction of separate facilities is legally permissible, the recipient shall make the facilities comparable.
(OCR Guidelines, Section IV D, 44 FR 17165)

e) Accessibility for handicapped persons.

1) Existing facilities.

i) Program accessibility.

A recipient shall operate its vocational program or activity so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
(45 CFR 84.22; 45 CFR 104.312)

ii) Methods for achieving accessibility.

A recipient may comply with the requirement of subparagraph (i) of this section through such means as redesign of equipment, reassignment of classes or services to accessible buildings, assignment of aids to students, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving accessibility. In choosing among available methods for achieving accessibility, a recipient shall ensure that handicapped persons are educated with persons who are not handicapped to the maximum extent appropriate.
(45 CFR 84.22; 45 CFR 104.312)

2) New facilities.

i) Design, construction and alteration.

Each new facility or alteration of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or the altered portion of the facility, is readily accessible to and usable by handicapped persons.
(45 CFR 84.23; OCR Guidelines, Section IV N, 44 FR 17166)

ii) American National Standards Institute Accessibility Standards.

Design, construction, or alteration of facilities shall

be in conformance with State Standards and with the "American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A117.1-1980). Departures from particular requirements of the ANSI standards will be permitted when it is clearly evident that the recipient has provided for equal access to the facility or to the altered portion of the facility. (45 CFR 84.23)

SECTION III

RECRUITMENT AND ADMISSION

3.1 What is the general rule?

No person shall, on the basis of sex, race, color, national origin, handicap, or age, be subjected to unlawful discrimination in the recruitment or admissions practices of any vocational education program or activity. (OCR Guidelines, Sections IV and V, 44 FR 17162)

3.2 What are the specific applications of the general rule?

a) Recruitment.

A recipient may not develop, sponsor, or engage in any recruiting activity, including the development or dissemination of recruiting materials, that discriminate against or stereotypes persons on the basis of sex, race, color, national origin or handicap. (OCR Guidelines, Section V-C, 44 FR 17167; 45 CFR 84.42; 45 CFR 86.23)

b) Promotional activities.

A recipient may not sponsor, or engage in the development of promotional materials or activities that discriminate against or stereotypes persons on the basis of sex, race, national origin, color, or handicap. Promotional activities include, among other things, career days, parent nights, shop demonstrations, and visitation by groups of prospective students. (OCR Guidelines, Section V-E, 44 FR 17167; 45 CFR 84.42; 45 CFR 86.23)

c) Public notification.

1) Prior to the beginning of each school year or academic semester, a recipient shall issue an appropriate public announcement (e.g., in a local newspaper or in its program bulletin) which advises students, parents, employees, and the general public that vocational education opportunities will be offered without regard to sex, race, color, national origin or handicap. A recipient should make all reasonable efforts to issue the announcement at least 30 days prior to the beginning of each school year or academic semester.

2) A recipient shall include in the public announcement the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activities. A recipient should also include a brief summary of program

offerings and admissions criteria.

3) A recipient whose service area contains a community of persons with limited English language skills shall distribute promotional materials and information, including information on financial assistance, to that community in its native language.

4) A recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.
(OCR Guidelines, Section IV-O, 44 FR 17166; 45 CFR 84.8; 45 CFR 86.9; Lau v. Nichols 414 U.S. 563)

d) Admission tests or other selection criteria.

1) A recipient may not use any admission test or other selection criterion for entrance into a vocational education course or program that disproportionately excludes applicants on the basis of sex, race, color, national origin, or handicap, unless the recipient can demonstrate that the test or criterion has been validated as essential for participation in that particular program.

2) A recipient may not discriminate in its admissions practices against persons on the basis of limited English language skills. A recipient operating a secondary vocational education program shall identify applicants with limited English language skills and assess their ability to participate in vocational education.
(OCR Guidelines, Section IV L, 44 FR 17166)

3) A recipient shall ensure that results of admission tests which are administered to an applicant who has a handicap that impairs sensory, manual or speaking skills, accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure. A test which reflects the applicant's impaired sensory, manual or speaking skills may only be used where those skills are the factors that the test purports to measure.

4) Admission tests that are designed for persons with impaired sensory, manual or speaking skills shall be offered as often and in as timely a manner as are other admission tests. Admission tests for handicapped persons shall be administered in facilities that meet the accessibility requirements of these standards.
(OCR Guidelines, Section IV, 44 FR 17165, 45 CFR 80.3; 45 CFR 84.42; 45 CFR 86.21; OCR Policy Memorandum-April 12, 1979).

e) Participation of handicapped students in private vocational programs.

1) A recipient that operates a private vocational education program may not, on the basis of handicap, exclude a qualified handicapped person from the program if the recipient can provide an appropriate education to the handicapped person by making minor adjustments to the program.

2) Subject to subparagraph (3) below, a recipient that operates a private vocational education program may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons unless provision of such education necessitates a substantial increase in cost to the recipient.
(45 CFR 84.39; OCR Guidelines, Section IX-A, 44 FR 17168)

3) Recipient licensed private schools and recipient registered private business schools shall comply with Sections 126.2, 126.4, and 126.7 of the Commissioner's regulations when charging costs to handicapped persons.
(8 NYCRR 126.2, 126.4 and 126.7)

f) Introductory, preliminary or exploratory courses.

1) A recipient may not establish an introductory, preliminary or exploratory course (e.g., industrial arts or home economics) as a prerequisite for admission unless the course is available without regard to sex, race, color, national origin, and handicap.

2) A course that was formerly available only on a discriminatory basis may be made a prerequisite for admission to a program only if the recipient can demonstrate that:

i) the course is essential to participation in the program; and

ii) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.
(45 CFR 80.3; OCR Guidelines, Section V, 44 FR 17167)

g) Preadmission inquiries.

1) Except as specified in Section 1.4, 1.5 or 4.2c of these Standards, or upon request by the U.S. Office for Civil Rights, a recipient may not inquire into an applicant's marital status, race, color, national origin, or handicap prior to accepting the applicant for admission. A recipient may make a preadmission inquiry as to the sex of an applicant for admission, but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by these standards.

2) When a recipient operating a postsecondary program is taking remedial action in accordance with 1.5 to correct the effects of past discrimination or when a recipient is taking voluntary action in accordance with 1.4 to overcome the effects of conditions that resulted in limited participation in its program or activity, the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, provided that:

   i) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

   ii) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, and that refusal to provide it will not subject the applicant to any adverse treatment.

3) After an applicant is accepted for admission, a recipient may ask whether the applicant has a handicap that may require accommodation. A recipient shall treat the answer to any such inquiry with confidentiality.
(45 CFR 84.41; 45 CFR 86.21)

h) Differential treatment based on parental, family or marital status.

A recipient may not apply any recruitment policy or admissions criterion concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex.
(45 CFR 86.21)

i) Pregnancy.

A recipient may not exclude a woman from admission to, or participation in, any vocational program on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom, or treat the pregnancy or childbirth differently from any other temporary disability.
(45 CFR 86.21)

SECTION IV

TREATMENT OF STUDENTS IN VOCATIONAL EDUCATION PROGRAMS, SERVICES, AND ACTIVITIES

4.1 What is the general rule?

No person shall, on the basis of sex, race, color, national origin, handicap, or age be excluded from admission to, participation in, denied the benefits of, or be subjected to unlawful discrimination in any vocational education program, service or activity operated by a recipient, or supported directly or through contractual or other arrangements by a recipient.
(OCR Guidelines, Section IV, 44 FR 17165)

4.2 What are the specific applications of the general rule?

a) Program requirements.

1) A recipient may not use or adopt academic requirements for participation in or completion of a vocational education program that discriminate on the basis of sex, race, color, national origin, or handicap.
(OCR Guidelines, Section IV, 44 FR 17165; 45 CFR 86.31; 45 CFR 80.3; 45 CFR 84.43)

2) To the extent a recipient imposes academic requirements, it shall modify those requirements as necessary to ensure that the requirements do not discriminate on the basis of handicap against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to a given program of instruction or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include substitution of specific courses required for the completion of graduation or degree requirements, and adaptation of the manner in which specific courses are conducted. All modifications shall be made in a manner that does not violate State law or regulations.
(OCR Guidelines, Section IV-N, 44 FR 17166; 45 CFR 84.44)

3) A recipient shall ensure that no handicapped student is discriminated against in its vocational education program or activity because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. Recipients are not required to provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature unless provided for in the student's Individualized Education Program.
(45 CFR 84.44)

4) A recipient may not impose upon handicapped students rules that limit their participation in the recipient's vocational education program or activity. For example, a recipient may not prohibit handicapped persons from using tape recorders or guide dogs in classrooms or campus buildings. (45 CFR 84.44)

b) Guidance and counseling.

1) A recipient may not counsel students to enroll in a particular course or program or measure or predict a student's prospects for success in any course or program on the basis of the student's sex, race, color, national origin, or handicap. (OCR Guidelines, Section V-B, 44 FR 17167, 45 CFR 84.37; 45 CFR 86.3)

2) A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials are shown to be essential to eliminate sex bias. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that the disproportionate number is not the result of unlawful discrimination in the instrument or its application. (45 CFR 86.36)

3) A recipient serving a student(s) identified as having a primary language other than English shall:

i) employ a counselor(s) who is(are) able to effectively communicate with students with limited English speaking skills; or

ii) provide an interpreter(s) who is(are) able to communicate with students of limited English speaking skills.

4) A recipient shall ensure that counselors can communicate effectively with hearing-impaired students. This requirement may be satisfied by having a signor available. (OCR Guidelines, Section V-D, 44 FR 17167; OCR Lau v. Nichols Remedies, 1975)

c) Special rules protecting handicapped children.

1) Identification of handicapped children.

Each recipient school district shall locate and identify all handicapped children who reside in the district in accordance

with S200.12 of the Commissioner's Regulations.
(8 NYCRR 200.12; OCR Guidelines, Section VI-A, 44 FR 17167; 45 CFR 84.32)

2) Individualized Education Program

Each recipient school district shall ensure that an individualized education program is developed for each handicapped pupil in accordance with S200.4(f) of the Commissioner's Regulations.
(8 NYCRR 200.4(f); OCR Guidelines, Section VI-A, 44 FR 17167; 45 CFR 84.36)

3) Procedural safeguards.

A recipient school district shall ensure that evaluation and placement of handicapped students is accomplished in accordance with the procedural guarantees contained in S200.5 of the Commissioner's Regulations.
(8 NYCRR 200.5; OCR Guidelines, Section VI-A, 44 FR 17167; 45 CFR 84.36)

d) Least Restrictive Environment.

1) A recipient shall ensure that each qualified handicapped person it serves is educated with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. This means that a recipient shall place a handicapped person in the regular education environment operated by the recipient unless the education of the person in the regular environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

2) Whenever a recipient places a person in a setting other than the regular educational environment, the recipient shall attempt to place the person in a facility as close to the student's home as possible.

3) A recipient shall comply with S200.4 of the Commissioner's Regulations when forming a special class for handicapped students under the age of 21.

4) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and recess periods, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in the activities and services to the maximum extent appropriate to the needs of the handicapped person.

5) All facilities, services, programs and activities provided to handicapped persons shall be comparable to those which the recipient provides to nonhandicapped persons.

(45 CFR 104.312; 45 CFR 84.34 and 43; OCR Guidelines, Section VI-A, 44 FR 17167, 8 NYCRR 200.4)

e) Student Evaluation.

1) A recipient may not discriminate against persons on the basis of sex, race, color, national origin or handicap in selecting or administering a test or evaluation to assess student performance in a course or program.

2) A recipient shall select and administer examinations or evaluate the achievement of students who have a handicap that impairs sensory, manual, or speaking skills so that the results of the examination or evaluation represent the student's achievement in the course rather than reflecting the student's impaired sensory, manual, or speaking skills, except where such skills are the factors that the test purports to measure.
(45 CFR 84.44; 45 CFR 80.3; 45 CFR 86.31)

f) Student organizations.

1) Membership in vocational education student organizations operated, administered or sponsored by a recipient shall be available to all students in the instructional program without regard to sex, race, color, national origin, or handicap.

2) A recipient may not charter or otherwise provide assistance to a student organization that discriminates in violation of paragraph (1) above.
(45 CFR 104.513; 45 CFR 84.47)

g) Cooperative vocational education, work study, apprenticeship training, and job placement.

1) A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in placing students in cooperative vocational education, work study, or apprenticeship training programs or in providing other job placement services.

2) A recipient may not enter into any arrangement with an agency, union, business, or other sponsor that discriminates against the recipient's students on the basis of sex, race, color, national origin, or handicap in recruitment, hiring, placement, assignment to work tasks, hours

of employment, levels of responsibility, or in pay.

3) Any written agreement for the referral or assignment of students under a cooperative, work study or apprenticeship program must contain an assurance from the union, sponsor, or employer that students will be accepted and assigned to jobs and otherwise treated without regard to sex, race, color, national origin, or handicap.

4) A recipient which employs its own students (e.g., in a work study program) shall also comply with the standards for employment set out below under Section V.
(OCR Guidelines, Section VII, 44 FR 17167; 45 CFR 104.515; 45 CFR 80.3; 45 CFR 86.31; 45 CFR 84.11 and 46)

h) Student housing and facilities.

1) A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in making available housing opportunities to its students. Separate residential facilities for males and females are permissible as long as the recipient makes comparable facilities available to both sexes.

2) A recipient may not enter into an agreement with an outside vendor or other organization for the provision of on-campus or off-campus housing if the vendor or other organization discriminates on the basis of sex, race, color, national origin, or handicap in making available housing opportunities or fails to make available comparable housing to students without regard to sex or handicap.

3) A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.
(OCR Guidelines, Section VI-C, 44 FR 17167, 45 CFR 84.45; 45 CFR 86.32; 45 CFR 80.5)

i) Financial assistance.

1) A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in providing student financial assistance in the form of loans, grants, scholarships, special funds, subsidies or prizes, except as provided in subparagraph (3) and (4) below.

2) A recipient may not assist any entity or person that provides financial assistance to the recipient's students if the financial assistance is provided in a manner that discriminates on the basis of sex, race, color, national origin, or handicap.

3) A recipient may administer financial assistance established by will, trust, bequest, or a similar legal instrument that requires awards to be made to members of a particular sex provided that the overall effect of the award of such sex-restricted assistance does not discriminate on the basis of sex.

4) A recipient may administer financial assistance established by will, trust, bequest, or similar legal instrument that requires awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of such assistance is not discriminatory on the basis of handicap.
(OCR Guidelines, Section VI-B, 44 FR 17167; 45 CFR 80.3; 45 CFR 84.46; 45 CFR 86.37)

SECTION V

EMPLOYMENT

5.1 What are the general rules?*

a) A recipient may not engage in any employment practice prohibited under Section 5.2 below if the employment practice discriminates against persons on the basis of sex or handicap.
(45 CFR 84.11)

b) A recipient may not engage in any employment practice prohibited under Section 5.2 below if the employment practice tends to result in segregation, exclusion, or other unlawful discrimination against students on the basis of race, color, or national origin.
(45 CFR 80.3; 45 CFR 86.31)

c) Where a primary purpose of Federal financial assistance to a program is to provide employment, a recipient may not engage in any employment practice prohibited under Section 5.2 below if the employment practice discriminates against persons on the basis of race, color, or national origin.
(45 CFR 80.3; 45 CFR 86.31)

5.2 What are the specific applications of the general rules?

a) Employment tests or other selection criteria.

A recipient may not use any employment test or other selection criterion that disproportionately excludes applicants on the basis of sex, race, color, national origin, or handicap unless the recipient can demonstrate that the test or other selection criterion validly predicts successful job performance.
(45 CFR 84.13; 45 CFR 86.52; 45 CFR 80.3)

b) Employment inquiries.

1) Pre-employment inquiries-general.

A recipient may not inquire into an applicant's marital status, sex, race, color, national origin, or handicap prior to extending an offer of employment to the applicant. A recipient may inquire into an applicant's ability to perform an essential job-related function prior to extending an offer of employment.

*The general rules set out herein delineate the scope of employment discrimination that is prohibited. It is important to note, however, that other provisions of Federal and State law may prohibit acts of employment discrimination which are not covered by the general rules (e.g., Title VII of the Civil Rights Act of 1964).

2) Pre-employment inquiries-handicapped persons.

Prior to extending an offer of employment, a recipient may invite applicants to indicate whether they are handicapped only under the following circumstances:

i) The recipient is taking mandatory or voluntary action in accordance with Section 1.4 or 1.5;

ii) The recipient states clearly on any written questionnaire used for this purpose that the information will be used solely in connection with its mandatory or voluntary remedial actions efforts; and

iii) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, and that refusal to provide it will not subject the applicant or employee to any adverse treatment.

3) Inquiries made after selection.

After an employee has been selected, a recipient may ask whether the person has a handicap that may require accommodation. A recipient shall treat the answer to any such inquiry with confidentiality.
(45 CFR 86.60; 45 CFR 84.14; 45 CFR 80.3)

4) Medical examinations.

i) A recipient may condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty only if:

A) All entering employees must take such an examination; and

B) The results of such an examination are used only in accordance with the requirements of Section V of these standards.

ii) Information obtained from medical examinations shall be collected and maintained on separate forms and accorded confidentiality as medical records, except that:

A) Supervisors and managers may be informed regarding necessary accommodations and restrictions on the work or duties of handicapped persons;

B) First aid and safety personnel may be informed of any condition that might require emergency treatment; and

C) Federal and State officials investigating compliance with civil rights laws shall be provided relevant information upon request.
(45 CFR 84.14)

c) Reasonable accommodation for handicapped employees.

A recipient shall make reasonable accommodations to the known handicapping condition of an applicant or employee. A recipient need not accommodate the person's handicapping condition if making the accommodation would impose an undue hardship on the operation of the recipient's program. In determining whether an accommodation is reasonable (i.e., whether or not it imposes an undue hardship) the following factors shall be considered:

1) the size of the recipient's program, including the number of employees, number and type of facilities, and size of budget;

2) the type of the recipient's operation, including the composition and structure of the recipient's workforce; and

3) the nature and cost of the accommodation needed.
(45 CFR 84.12)

d) Recruitment and advertising for employment.

A recipient may not recruit or advertise for employees in a manner that discriminates on the basis of sex, race, color, national origin, or handicap. A recipient may not limit recruitment to single sex or segregated schools, companies or communities except for the purpose of taking remedial actions in accordance with Section 1.5 of these standards.
(45 CFR 86.59; 45 CFR 86.53; 45 CFR 84.11; 45 CFR 80.3)

e) Hiring, upgrading, promotion, award of tenure, demotion, transfer, lay-off, termination and rehiring.

A recipient may not hire, upgrade, promote, award tenure to, demote, transfer, lay-off, terminate, or rehire any employee on the basis of sex, race, color, national origin, or handicap.
(45 CFR 86.51; 45 CFR 84.11; 45 CFR 80.3)

f) Salaries or other compensation.

A recipient may not, on the basis of sex, race, color, national origin, or handicap, engage in any practice that:

1) Makes distinctions in salaries or other compensation; or

2) Results in different compensation for work requiring equal skills, effort, and responsibility, and performed under similar working conditions.
(45 CFR 86.54; 45 CFR 84.11; 45 CFR 80.3)

g) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

A recipient may not classify a job, maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems for similar jobs on the basis of sex, race, color, national origin, or handicap.
(45 CFR 86.55; 45 CFR 84.11; 45 CFR 80.3)

h) Leave of absence, sick leave, leave to care for children, or any kind of leave.

A recipient may not engage in any practice that discriminates against employees on the basis of sex, race, color, national origin, or handicap in the granting or withholding of leave.
(45 CFR 86.51; 45 CFR 84.11; 45 CFR 80.3)

i) Decisions based on marital or parental status.

A recipient may not apply any policy or take any employment action which discriminates on the basis of actual or potential marital, parental, family, household, or principal wage-earner status of employees or applicants.
(45 CFR 86.57)

j) Pregnancy.

1) A recipient may not discriminate on the basis of pregnancy against any employee or applicant for employment.

2) A recipient shall treat pregnancy as any other temporary disability for all job related purposes, including the granting or termination of leave.

3) A recipient may not establish an arbitrary point in pregnancy for commencement of maternity leave or establish an arbitrary minimum period of time for duration of such leave.

4) A recipient shall permit a pregnant employee to continue working as long as she is physically able to perform the duties of her position and shall permit her to return to work as soon as she is physically able to resume performance of her duties.
(45 CFR 86.57)

k) Fringe benefits.

A recipient may not:

1) Make fringe benefits available differently to employees or to employees' spouses, families, or dependents on the basis of the employees' sex, marital status, race, color, national origin, or handicap; or

2) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex, marital status, race, color, national origin, or handicap.
(45 CFR 86.56; 45 CFR 84.11; 45 CFR 80.3)

l) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities.

A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in selecting or supporting individuals financially for any type of employment-related training or activity.
(45 CFR 84.11; 45 CFR 86.51; 45 CFR 80.3)

m) Employer-sponsored activities, including social or recreational programs.

A recipient may not sponsor any activity which has the effect of discrimination against employees on the basis of sex, race, color, national origin or handicap.
(45 CFR 84.11; 45 CFR 86.51; 45 CFR 80.3)

n) Membership on planning or advisory councils.

A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in selecting or recruiting members of planning or advisory councils. The membership of a recipient's local advisory council on vocational education shall generally reflect the percentage of men, women, and racial and ethnic minorities in the workforce of the area served by the recipient.
(45 CFR 104.111; 45 CFR 80.3)

o) Sex as a bona fide occupational qualification.

A recipient may make employment decisions on the basis of sex if the recipient can demonstrate that sex is a bona fide occupational qualification directly related to the employment function in question. Sex is a bona fide occupational qualification only when consideration of sex is essential to successful operation of the employment function concerned.
(45 CFR 86.61)

SECTION VI

AGE DISCRIMINATION

6.1 What is the general rule?

No person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any vocational education program or activity. This means that a recipient may not use age distinctions or take any other actions which have the effect, on the basis of age, of excluding individuals from benefits or denying or limiting their opportunity to participate in any vocational education program.
(45 CFR 90.1)

6.2 What are the exceptions to the general rule?

A recipient may, under the circumstances set forth in subparagraphs (a), (b), or (c), use age distinctions or take action which has the effect, on the basis of age, of excluding individuals from benefits or denying or limiting their opportunity to participate in a vocational education program or activity.

a) Under any law.

It is not a violation of the general rule if the age distinction, which conditions vocational education benefits, is contained in a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body.

b) Necessary for the normal operation or statutory objective.

1) It is not a violation of the general rule if the age distinction is necessary to:

i) the normal operation of the vocational education program; "normal operation" means the operation of a vocational education program or activity without significant changes that would impair its ability to meet its objectives; or

ii) the achievement of any expressly stated statutory objective of a vocational education program or activity; "statutory objective" means any purpose of the vocational education program or activity expressly stated in any Federal statute, State statute or local statute.

2) For the purpose of subparagraph (1), age may be necessary to the normal operation or the achievement of any statutory

objective of a program or activity if:

i) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

ii) The other characteristic(s) must be measured or approximated in order for the normal operation of the vocational education program or activity to continue, or to achieve any statutory objective of the program or activity;

iii) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

iv) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.
(45 CFR 90.14)

c) Factor other than age.

It is not a violation of the general rule if a recipient takes an action that, although based on a factor other than age, results in a disproportionate impact on the basis of age. The factor other than age must bear a direct and substantial relationship to the normal operation of the vocational education program or activity or to the achievement of a statutory objective.
(45 CFR 90.15)

6.3 Employment practices.

Employment practices using age distinctions are not covered by the general rule prohibiting age discrimination except for any vocational program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act.
(45 CFR 90.3)

APPENDIX

DEFINITIONS

Action means any act, activity, policy rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

Age means the number of elapsed years from the date of a person's birth.

Commissioner means Commissioner of Education.

Construction means
1) Construction of new buildings;
2) Acquisition, expansion, remodeling, renovation, and alteration of existing buildings;
3) Site grading and improvement; and
4) Architect fees.

Department means the New York State Education Department.

Discrimination means any action which differentiates or distinguishes among persons or limits or denies a person or a group of persons opportunities, privileges, roles, or rewards on the basis of their race, color, national origin, sex, handicap, or age.

Disproportionate exclusion means an exclusion rate for any race, color, national origin, sex, handicap, or age group which is significantly greater than the exclusion rate for the group with the lowest exclusion rate.

Facility means all or any portion of building, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or other arrangement by which the Federal government provides or otherwise makes available assistance in the form of:
1) Funds;
2) Services of Federal personnel; or
3) Real and personal property or any interest in the use of such property.

Goal means a number or percentage representation of persons with a particular characteristic which a recipient attempts to achieve in its student population or work force by giving, as one factor in its admissions process, favorable consideration to applicants with that particular characteristic.

Handicapped person means a person who is:

1) Mentally retarded;
2) Hard of hearing;
3) Deaf;
4) Speech impaired;
5) Visually handicapped;
6) Seriously emotionally disturbed;
7) Orthopedically impaired; or
8) Other health impaired person, or persons with specific learning disabilities; and

Who by reason of the above:

1) Requires special education and related services;
2) Cannot succeed in the regular vocational education program without special educational assistance; or
3) Requires a modified vocational education program.

Limited English language skills mean:

1) Individuals who were not born in the United States or whose native tongue is a language other than English; or
2) Individuals who came from environments where a language other than English is dominant; and

Who by reason of the above:

Have difficulty speaking or understanding instruction in English.

Program means a planned course or sequence of courses, services, or activities designed to meet an occupational or educational objective.

Quota means a number or percentage of a recipient's student population or work force reserved for persons with a particular characteristic and unavailable to persons without that characteristic.

Recipient means a recipient of Federal financial assistance.

Selection criteria means any measure, combination of measures, or procedure used as a basis for any admission, recruitment, or employment decision. Selection criteria include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

Stereotyping means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis of their race, color, national origin, sex, handicap, or age.